

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 35 of 2005

U.P. Jal Nigam,
Through its Managing Director,
6 Rana Pratap Marg, Lucknow. Appellant

Versus

Shanti Prasad S/o Sri Lal Mani Syal,
R/o Village Siron, Post Doda Mandi,
District Pauri Garhwal. ... Respondent

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.**

RAJEEV GUTPA, C. J. (Oral)

Appellant U.P. Jal Nigam has filed this Special Appeal against the impugned judgment dated 18.09.2003 passed in Writ Petition No. 4890 of 2001 (S/S), whereby the writ petition filed by respondent Shanti Prasad was allowed in terms of the judgment dated 21.08.2003 passed in Writ Petition No. 77 of 2003 (S/B) Pritam Singh Jantwal Vs. Adhishasi Abhiyanta (Nirman Shakha), U.P. Jal Nigam, Nainital and three others.

2. Respondent Shanti Prasad filed the writ petition for the following reliefs:

“i. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay the year 1998-99, revised by the 5th pay commission and leave encashment of 60 days of the year 1998-99 alongwith 18% interest per annum on the said amount to the petitioner.

ii. pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iii. award the cost of writ petition to the petitioner.”

3. Petitioner Shanti Prasad was appointed as Work Charge Munshi in work charge establishment in the office of Executive Engineer, Production Division, U.P. Jal Nigam, Kotdwar, district Pauri Garhwal sometime in the year 1983. His services were regularised on the same post w.e.f. 01.04.1989. The petitioner was retired from service on 31.12.1999. The petitioner’s grievance was that the respondents have illegally denied him pension on the ground that he has not completed qualifying service of 10 years.

4. The respondents in their counter affidavit have stated that as the writ petitioner was allowed to continue in service beyond the age of 58 years under some mistake, he was not entitled to get pension, as he would not have completed 10 years of qualifying service in the event of his retirement on 31.12.1997 on his attaining the age of 58 years.

5. The learned Single Judge, while considering the similar question in the case of Pritam Singh Jantwal Vs. Adhishashi Abhiyanta (Nirman Shakha) U.P. Jal Nigam, Nainital and others in Writ Petition No. 77 of 2003 (S/B) held, vide judgment dated 21.08.2003 in the said writ petition, that petitioner Pritam Singh was entitled to get pension. The learned Single Judge has followed his earlier judgment dated 21.08.2003 in holding that petitioner Shanti Prasad was entitled to get pension.

6. The judgment dated 21.08.2003 passed in Writ Petition No. 77 of 2003 (S/B) in the case of Pritam Singh Jantwal Vs. Adhishashi Abhiyanta (Nirman Shakha) U.P. Jal Nigam, Nainital and others was the subject matter of Special Appeal No. 30 of 2004, which has been dismissed by us vide judgment dated 05.08.2006. In the said appeal, following the dictum of the Apex Court in the case of Kailash Singh

Vs. State of Bihar and others reported in 2005 AIR SCW 3273 and while affirming the judgment of the learned Single Judge, we have taken the view that once an employee is allowed to continue in service and he is paid salary for the extended period, then the said extended period shall also be counted for pension purposes.

7. Since the sole question involved in this Special Appeal already stands decided against appellant U.P. Jal Nigam vide judgment dated 05.08.2006 passed in Special Appeal No. 30 of 2004, the present Special Appeal is also liable to be dismissed.

8. The Special Appeal, therefore, is dismissed and the impugned judgment dated 18.09.2003 is hereby affirmed.

9. No order as to costs.

(J.C.S. Rawat, J.)
22.08.2006

(Rajeev Gupta, C. J.)
22.08.2006

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